

**--BEFORE THE FEDERAL COMMUNICATIONS COMMISSION--**

**Washington, D.C. 20554**

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**In the Matter of IP-Enabled Services**

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**WC Docket No. 04-36; FCC 04-28**

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**COMMENTS OF THE UTAH DIVISION OF PUBLIC UTILITIES**

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### **I. INTRODUCTION**

The Utah Division of Public Utilities (“DPU”) is located in the Department of Commerce and functions as the investigative agency for the Utah Public Service Commission (“PSC”). The DPU may “commence original proceedings, file complaints, appear as a party, present factual information and evidence, examine witnesses, advocate policy recommendations, commence appeals, and otherwise participate in proceedings before the PSC.”<sup>1</sup> The DPU also receives and investigates consumer complaints and monitors utility operations to ensure compliance with PSC rules, regulations, and orders. The DPU respectfully submits their comments concerning VoIP herein.

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<sup>1</sup> Utah Code, Title 54-4a-1(1)

## **II. SUMMARY**

The Utah DPU's comments in this matter specially address the appropriate regulatory framework for categories of IP-enabled services and the implications of regulation of such services. Utah recognizes the benefits and efficiencies realized by consumers through new technologies such as VoIP. We agree with the FCC that new technologies such as VoIP should be treated with a lighter regulatory approach. We strongly believe there is a need to ensure regulatory oversight above issues pertaining to fair and open competition as well as public interest factors.

When looking at WHAT to regulate, the key question to focus on is WHY do we regulate and who is best suited to perform the regulatory function. We do not want to put unnecessary regulations in place; we do want to lessen the regulatory burdens as competition emerges. However, for fairness of equity and the protection of the public interest, there are definitive reasons that VoIP should be regulated in part. Regulation should address the need for social and economic purposes and goals. Any specific regulation imposed upon VoIP carriers should have a specific and appropriate social purpose. The regulation should not go beyond that designated purpose or interfere unduly with the market because it could slow the development of VoIP and other services. State regulatory Commissions are often far better positioned and equipped to investigate and make public interest judgments regarding local service issues than is the Federal Government.

The critical issues that Utah believes should be regulated in some part include the following: E911, USF, and quality of service. Utah agrees that a light touch to regulation is appropriate for VoIP service providers just as it is with other competitive telecommunication providers. Also, we have tried to deregulate many portions of telecommunication services within Utah; however, this does not by any means imply that NO regulation should exist. We know from experience that we cannot expect companies to voluntarily comply with, or even agree with, every public policy objective. For that reason we have rules to assure that customers receive the service they expect. We, therefore, feel that some form of light regulation must be established. We strongly believe that states should have the ability to ensure these requirements are enforced no matter who the telecommunications provider is.

## **III. CATEGORIZATION OF IP-ENABLED SERVICES**

The FCC has requested comments on how to classify IP-enabled services. In Section R746-340.1.19 of the Utah Administrative Code, The Utah PSC defines Voice Grade Service as service that, at a minimum, includes access to 911, two-way communications with a clear voice each way and the ability to place and receive calls. A Utah Statute defines public telecommunications service "as the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means

offered to the public generally.”<sup>2</sup>

By combining the definition of voice grade service with the definition of public telecommunication service, it can be seen that the Utah Legislature intend that a voice communication path between two parties, regardless of the technology providing the transmission or generation of that signal, as well as the distinction between analog or digital wave, is a signal allowing two parties to communicate.

Likewise, IP Voice is defined as the transmission of timing sensitive packetized voice utilizing a stack of enhanced protocols originally designed for data interworking. VoIP encompasses the point-to-point integration of voice and data sent in digital format (1010’s) over IP networks that may ride on other networks such as frame relay or ATM. In any event, the voice is ultimately handed off to a circuit-switched environment to complete a call.

Consistent with Utah definitions, it can be argued that VoIP is a voice signal transmitted over a new technology media that is ultimately transparent to the end user. This analogy can be likened to the migration of telecommunication signals in the late 1980’s, which changed the transmission signal from analog to digital; this is the norm in today’s telecommunications network. The transmission of voice has the same end result despite the technology used to transport the call that allows connection between two people.

The FCC has claimed that some forms of VoIP are information services and therefore are not subject to regulation. Utah is not as greatly concerned as to HOW VoIP is defined as it is with the functional equivalence to traditional telephone service and interconnection with the Public Switched Telephone Network (PSTN). We contend that as stated in Utah Statutes, Rules, & Definitions, if a telephone call is originated and terminated using the PSTN to connect two voice conversations, it should be regulated as functionally equivalent to traditional telephone service.

As a matter of equity, providers that use the PSTN (including IP-enabled providers) should pay for this use in a similar manner as everyone else is required to. If VoIP providers are exempt from certain regulatory burdens that all other telecommunication providers are required to comply with, we create artificial incentives that are not market-based, nor equitable in an environment that is trying to encourage competition in all forms. We leave the computer-to-computer, substitutability approach, layers approach, et cetera up to the FCC. Our objective is NOT to define the service, but as stated above, to ensure that states have governance over certain portions of the service. The 1996 Telecom Act does not discriminate as to what forms of service are provided; their objective is to further competition in all forms.

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<sup>2</sup> Utah Code Title 54-8b-2

#### **IV. IDENTIFICATION OF CALLS**

It has been argued that state regulation of VoIP should be preempted because it is currently impossible to identify whether voice calls are intrastate or interstate. The importance of this potential problem is substantially overstated. This appears to be mainly a problem where rate of return regulation and separations issues are involved. It may be necessary to identify calling patterns and minutes of use in order to allocate costs and plant between jurisdictions. We do not advocate, nor does Utah now rate regulate any competitive telecommunications provider. Service quality, interconnections, and Universal Service protection issues can be addressed without requiring detailed measurement of the jurisdiction of each call. Although rule and policy changes may be required, compatible state regulation can readily continue to exist together with federal regulation, as it has for many years.

#### **V. REGULATORY FRAMEWORK**

We must ensure that our regulatory policies handle similar services in a similar fashion. Similarly, we do not want to create a regulatory framework that promotes potential arbitrage opportunities: a VoIP provider can offer phone service at a much cheaper rate than traditional phone companies burdened by taxes, subsidies, and intercarrier charges. We recognize that these opportunities advance the benefits that flow from free and open market forces, such as consumer choice, investment, and innovation; however, VoIP services possess the potential to displace traditional telephony services and we strongly believe that competitive local exchange carriers and other providers of the same service can compete on an equal and level playing field. Similar to other services that are regulated by both federal and state statutes and governing authorities, Utah believes that the FCC should regulate some portions of VoIP, but that states should maintain governance over other parts of VoIP.

There is not an aggregate policy or list of regulations that can mold to each state or local areas unique circumstances and needs. Each state and local area is comprised of its own distinctive characteristics. In Utah, for example, the majority of competition for telecommunications services resides along the Wasatch front, the sixty-mile long corridor running north and south around Salt Lake City. There is a disproportionate amount of competitive activity in rural areas and throughout the state. By maintaining jurisdiction at the state level, our PSC is able to protect the interests of all ratepayers, both in urban and rural areas that are unique to this state. Further, in Utah, the PSC and affiliated agencies are much closer to customers and have better information on service quality, complaints, access to 911, and other issues on a direct basis than are federal bodies. In addition, states are able to receive data much sooner than the FCC does and can access the needs of regulation pertinent to each state's need on a state-specific basis.

A. Certificate of Operating Authority

Each CLEC in Utah is required to have a certificate of operating authority in order to provide service in our state. We, likewise, believe that VoIP providers that provide the equivalent of local exchange service need to have a certificate to operate within our state. Concerns have been expressed about VoIP providers having to obtain a certificate to operate in every state within the country. However, CLECs now have to obtain the same certificate if they choose to provide service in Utah, Oregon, or Virginia. They are required to have an operating license in each individual state. This is only fair to competition and creates a level playing field for companies that provide service other than through VoIP. Within the State of Utah, certificates are not difficult to obtain, and certificated companies are lightly regulated. Utah's light regulatory approach is not onerous to CLECs. Essentially the only two constant duties obligatory of a CLEC are an annual report and price list filing. These companies are certainly also subject to interconnection and service quality requirements.

It seems obvious that the majority of voice calls made today are intrastate in that the call originates and terminates within the boundaries of a particular state and, therefore, are subject to state oversight. Moreover, the Utah PSC works in partnership with NANPA to oversee the number assignment (NXX) quotas to certified telecommunication providers. The partnership assures the conservation and protection of this valuable and limited resource. This regulatory protection is in the public interest as it assures that NXX's are fairly allocated to all certified carriers while possibly delaying the necessity to assign new area codes that ultimately causes inconvenience to the general public. It is this type of regulatory oversight that would benefit a CERTIFIED VoIP provider, since it would not have to rely on the discretionary number assignment by another provider.

B. State Regulation

Regulation should address the need for social and economic purposes and goals. Utah strongly affirms that states should be the proper designated body to regulate quality of service and consumer protection issues, the support base for universal service, and authority over emergency dialing services. The following are examples of what Utah believes should be regulated by state governance.

**1. Quality of Service.**

Light state regulation is essential in maintaining reasonable service standards and consumer protection against poor or inadequate service. There are several areas that will not be protected for VoIP consumers without state regulatory supervision. Reliability, for instance, is a major

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concern of VoIP. The implementation of reliable VoIP service assumes the presence of high

quality broadband networks. A bad Internet connection, on the other hand, can damage a VoIP call leaving it susceptible to delays through crowded conditions or severed lines also known as broadband bottleneck. The quality of this voice transmission could ultimately result in missed or delayed words or even dropped calls. With both VoIP and IP networks unregulated, there is no assurance that a VoIP customer will be able to receive adequate and reliable telecommunication voice service. In contrast, Utah Statutes require telecommunication providers to conduct performance monitoring to preserve network performance, provisioning intervals, and general service quality in order to protect consumers from the former exemplars of service disruptions.<sup>3</sup> All regulated telecommunication providers are also required to meet minimum voice grade requirements and call completion standards that protect service quality.

Without regulation, VoIP Customers may not be guaranteed notification of planned service interruptions or discontinuity of service. In the event of a planned service interruption due to equipment or facilities modification, a VoIP provider is not required to notify customers regarding interruption of service. A VoIP customer is also not guaranteed to receive notification if a VoIP service provider goes out of business or terminates service in an area. This may leave some customers without telephone service and without assurance of another service provider.

There are numerous other matters that will not be safeguarded in the absence of state regulation. For instance, VoIP customers may not be guaranteed the benefits of reliable emergency (power outage, storm, etc.) operation service, maintenance programs aimed at efficient use of networks, quality service standards, and customer protection laws (customer privacy, rate regulation, anti-slamming, anti-cramming, company representative support, et cetera).

PSC service quality rules protect telecommunication customers from the abovementioned issues by requiring the service they expect. These rules were developed and are essential to providing reliable, efficient telecommunication service. In Utah, all telecommunication companies are bound to these rules regardless of the amount of business they conduct within the state. The Utah PSC protects customers' rights by handling and investigating complaints and monitoring telecommunication operations to ensure compliance with PSC rules, regulations, and orders. If service is still inadequate, the state grants customers the right to approach the PSC to resolve issues that were unable to be resolved with the telecommunication company. Through mediation, the PSC helps resolve disputes. As a result, state regulatory supervision of quality of service is successful as it encourages telecommunications providers to maintain efficient operations. For this reason, VoIP local exchange customers deserve, and likely expect, the same service quality as is provided by other competitive telecommunication providers operating in the State of Utah.

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<sup>3</sup> Utah Statute R746-365-5.1-3

## **2. USF/Rural Carriers.**

The FCC has recognized that rural carriers derive a significant portion of their revenues from access charges. This is also true for both the federal and state USF contributions. Without subsidized funding, the rural carriers would have no other option than to increase rates to their subscribers to unreasonable levels which is in direct contradiction of the goal of the Universal Service Fund as described in the 1996 Telecommunications Act and the Utah legislature in Statute 54-8b-15 (6).

The DPU agrees with the FCC that accelerating development of new technologies like VoIP will increase the strain on regulatory distinctions. It is certain that as both ILECs and CLECs begin to migrate subscribers to VoIP type services, contributions to the USF will diminish since the technology is often not subject to USF contributions because VoIP is provided over Broadband, which does not currently contribute to the Universal Service Fund. As state and federal USF funds diminish, the ultimate result will be a reduction of aid to rural companies. Likewise, the shortfall will also curtail federal assistance to high cost, low-income assistance programs, schools and libraries, and rural health care programs.

Unless both the federal and state Universal Service Fund Programs are drastically curtailed or reformed, IP-enabled service providers must contribute to the federal and state USF funds as do all other telecommunication providers, both landline and wireless. Moreover, nonpayment into the USF by VoIP providers can be perceived as an unfair competitive advantage to telecommunication providers who have higher rates due to USF fees collected from their subscribers. To maintain a competitive level playing field and to continue support of public programs funded by the state and federal USF, the DPU believes that VoIP providers must be subject to direct contributions to both the federal and state USF.

## **3. Emergency 911.**

In their NPRM the FCC seeks comments on whether IP-enabled services are technically and operationally capable of complying with the Commission's basic 911 trunking facilities in operation today. The issue that should be addressed is when can the IP-enabled service develop the capability of offering 911 services, not whether the IP-enabled service technically capable of offering 911 services. The answer from VoIP providers would be "not at this time" or let the consumer determine if they want access to 911/E911 service.

After almost forty years of diligent research, development, and implementation of the national and state 911/E911 system, the general public and safety responders have become dependent on the system. It is imperative that the established social and public safety programs and the



911/E911 system integrity are maintained as the telecommunications industry evolves to new technologies.

The FCC has established a four-step criterion to assist in determining whether particular entities should be subject to 911/E911. The FCC followed this criterion when it mandated that wireless industry provide accurate consumer location data to the appropriate 911/E911 call centers. It is critical to state and National Homeland Security and Public Safety that all telecommunications providers, including IP-enabled service providers, deliver emergency calls within the current 911 infrastructure that has been developed over the years. It is not acceptable for an IP-enabled service provider to direct their subscribers to dial 911 administrative office locations, as has been done at the introduction of VoIP service, and expect the personnel to patch the call to the Emergency call centers (PSAP). In its effort to maintain 911/E911 integrity, the State of Utah PSC has established a rule that directs competitive providers to either provide 911/E911 service or interconnect with the Local Exchange Provider to provide the service.<sup>4</sup> All telecommunication providers in the State of Utah comply with this direction, even competitive providers who have minuscule subscribers and limited budgets. Further, every telecommunication provider in Utah is subject to monthly emergency services charges for each local access line to sustain the maintenance of this service. Accordingly, when an IP-enabled provider begins to offer local voice service to the general public it should be required to comply and provide 911/E911 service access that appropriately identifies the accurate location of the caller by possibly inserting a GPS device into the computer card/box that VoIP providers use. In any event, through some methodology, the VoIP provider must be required to be proactive and comply with the 911/E911 protocol.

Oversight of the telecommunication industry to assure efficient and proper delivery of calls for emergency assistance should be a partnership of both federal and state commissions. It is essential for the FCC to mandate, as it did with the wireless industry, that the IP industry recognize the different environment of VoIP and proactively address the 911 issues so as to expand functionality and capacity for future technologies. The state commissions would then continue its vigilant oversight of the industry to assure compliance and safeguard the public interest. The FCC should not fall prey to the claim made by some IP-enabled service providers that "the consumers should decide." Because of the importance, and most importantly, the consequences that may arise in the absence of E911, VoIP providers should be obligated to comply with E911 requirements.

#### **4. Other Services**

The DPU believes that VoIP providers should also be required to contribute to services that other local telecommunication carriers provide such as disability access for the hearing and speech impaired, low-income assistance (Lifeline Program), and contributions to the Poison Control

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<sup>4</sup> Utah Statute R746-347-6 (B)

Center. Exempting VOIP providers from contributing to services that all other telecommunication providers in Utah are obligated to provide will erode the support base of local fees.

Consequently, all other telecommunication carriers in Utah absorb the burden of these services.

C. CALEA

IP-enabled services must meet the Department of Justice standards for law enforcement. Law enforcement and national security needs to be allowed these capabilities at this time where our infrastructure is at threat and our country is subject to terrorist attacks. Since the FCC is addressing CALEA in another docket and the FBI may propose changing the CALEA requirements, addressing this issue is outside out bounds at this time. CALEA is also a federal, not a state law. If the provisions in CALEA are changed, Utah believes that all VoIP providers need to comply. With the new technologies and motivation to meet the expected business plan projections, companies have strong incentives to find ways to make their systems capable of meeting law enforcement standards. With the protection of infrastructure at risk, we do not believe this should be a voluntary issue, but rather a necessary requirement.

**VI. CONCLUSION**

In summary, state regulatory oversight of VoIP providers should include E911, USF, and consumer protection to safeguard quality of service. It is imperative that state commissions be allowed to continue their vigilant oversight of these issues pertaining to the telecommunications industry to assure that consumers' rights to quality voice telecommunications service is protected. Overall, the Utah DPU believes that state regulatory supervision of these matters will be beneficial to VoIP consumers.

Respectfully submitted,

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